IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 5940/2002

MAHADEV Vs. ADDITIONAL COLLECTOR (III), JAIPUR & ORS.

DATE: 17.09.2007

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. K.N. Sharma for the petitioner.
Mr. R.K. Daga for the respondents.

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This writ petition is directed against the order impugned dated 24.06.2002 (Annexure-7) passed by the Additional Collector (III), Jaipur, by which the 'Patta' issued by the Gram Panchayat Jamvaramgarh in favour of the petitioner on 14.12.99 has been cancelled. It is alleged that a revision was preferred by respondent No.3 Jitendra Kumar against the resolution No.73 dated 14.12.99 passed by the Gram Panchayat Jamvaramgarh, whereby the petitioner was given 'Patta' alleging therein that the said 'Patta' is given in the public chowk.

In the aforesaid revision filed by respondent No.3 Jitendra Kumar under Section 272 of the Rajasthan Panchayati Raj Rules, the Additional Collector has considered each and every aspect and has observed that

the 'Patta' has been given with the connivance of Gram Panchayat Jamvaramgarh and it is not disputed that the alleged 'Patta' was given in the public chowk, therefore, the resolution No.73 dated 14.12.99, by which 'Patta' was given in favour of the petitioner, has been cancelled.

Learned counsel appearing for the petitioner submits that the petitioner is having possession of the land adjacent to Bawri in Jamvaramgarh since his ancestors were residing there and Kachha houses were constructed over the land in question and the Ward Panchas have submitted their report of site inspection on 20.09.99 to the Gram Panchayat Ramvaramgarh on the statements of Rameshwar Prasad and Ram Kalyan and on the basis of the said inspection report submitted by the Ward Panchas, resolution has been passed by the Gram Panchayat in favour of the petitioner allotting 'Patta' of the land measuring 95.1/3 Sq. Yds. (26x33 Ft.) @ Rs. 25/- per Sq. Yds. Thus, no illegality has been committed by the Gram Panchayat.

Per contra, learned counsel appearing for the respondents submits that the petitioner without challenging the order passed by the Additional Collector (III), Jaipur dated 24.06.2002 before the appropriate authority, has filed the instant writ

petition. He further submits that in this regard a suit is filed by the respondents before the Civil Court which is pending. Thus, the alleged 'Patta' which was given in favour of the petitioner, is admittedly in public chowk and the Additional Collector has rightly cancelled the 'Patta' in view of the ratio decided by the Hon'ble Supreme Court in the case of **Kanhaiya Lal Vs. Addl. Collector, Kota & Ors., reported in 1993(1) RLR 356,** wherein this Court has held that while exercising power under Articles 226 and 227 of the Constitution of India, interference- Illegal allotment of abadi land by Gram Panchayat against rules- Addl. Collector set aside order of Gram Panchayat, High Cout under Articles 226 and 227 cannot interfere in such a matter which would result in restoration of illegality.

He also placed reliance on the judgment rendered by this Court in the case of **Mahaveer Prasad Vs. State of Rajasthan & Ors., 1996(3) WLC (Raj.) 595,** wherein it has been held that conduct of petitioner- Cancellation of Patta covering sale of land to petitioner- Petition against order of cancellation- Land obtained in violation of prescribed Rules- Patta rightly cancelled- Petitioner having benefitted by illegal transaction bound to suffer- Petition meritless.

Having considered the rival submissions of the respective parties and upon careful perusal of the order impugned dated 24.06.2002 as well as the judgments referred by the learned counsel for the respondents and the documents annexed with the writ petition, it is no doubt that the petitioner moved application for seeking permission to raise Pakka construction over the land possessed by him and also prayed to give 'Patta' for that land.

So far as possession of the petitioner is concerned, it is not disputed by Rameshwar Prasad and Ram Kalyan but in the inspection conducted by the Ward Panchas, they have not categorically stated whether the land in question belongs to public chowk or not, but the Additional Collector has considered this report and has observed that the 'Patta' was given in public chowk and the resolution which has been passed by the Gram Panchayat, is contrary to the provisions of the Rajasthan Panchayati Raj Act and Rules .

Thus, having gone through the order impugned dated 24.06.2002 passed by the Additional Collector (III), Jaipur, I find no illegality or error apparent on the face of the record. Even otherwise also, several disputed questions and facts are raised in this writ petition which cannot be decided by this Court while

exercising extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. Therefore, I find no merit in the writ petition.

Consequently, the writ petition fails being devoid of merit and the same is accordingly dismissed.

The interim order dated 06.09.2002 granted by this Court is hereby rejected. The stay application also stands rejected.

(K.S. RATHORE),J.

/KKC/